

**Bescheld/Protokoll (Anlage)**

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Communication/Minutes (Annex)

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Notification/Procès-verbal (Annexe)

Anmelde-Nr.:
Application No.:
Demande n°:

01 107 443.2

The examination is being carried out on the **following application documents**:

Description, Pages

2-9 as originally filed

1, 1a, 10 received on 02.12.2004 with letter of 02.12.2004

Claims, Numbers

1-10 received on 02.12.2004 with letter of 02.12.2004

Drawings, Sheets

1/1 as originally filed

Reference is made to the following documents; the numbering will be adhered to in the rest of the procedure:

- D1: EP-A-0 670 483 (FUJI PHOTO FILM CO LTD) 6 September 1995 (1995-09-06)
D2: WO 93/25309 A (KAARTINEN NILO) 23 December 1993 (1993-12-23)

The following documents (D) are cited by the examiner (see the Guidelines, C-VI, 8.7). Copies of the documents are annexed to the communication and the numbering will be adhered to in the rest of the procedure:

- D3: EP-A-0527059
D4: US-A-5482863
D5: JP62184357
D6: EP-A-0607442
D7: JP58102155
D8: JP01027626

1. The applicant should note that the application could have been refused on the base of

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lack of novelty of claim 8 with regard of D3. However in order to introduce more relevant documents this further communication is issued.

2. The present application does not meet the requirements of Article 52(1) EPC, because the subject-matter of claims 8-10 is not new in the sense of Article 54(1) and (2) EPC.

Independent apparatus claim 8:

D4 clearly discloses an apparatus (Ref.1 in Fig.1) suitable for stirring a liquid in a container (Ref.8 in Figs. 2-5), comprising a container (8) in which a liquid is contained; and a means for sucking the liquid (pipetting needle 18) from the container (8) and for discharging the liquid into the container (8) wherein the container opens at the top thereof, and wherein the means is capable of horizontally moving so that the liquid is discharged into the container at a position different from that where the liquid has been sucked from the container (see Col.1, lines 42-44, the device has means for moving the pipetting needle in three directions at right angles).

Claim 9:

In the apparatus of D4, the container (8) has an inclination on the inside wall of the container, said inclination increasing in height toward the outside of the container (clearly shown in Figs. 2-5).

Claim 10:

A pipette is a kind of nozzle.

Coming to the method claims:

3. The present application does not meet the requirements of Article 52(1) EPC, because the subject-matter of claims 1-4 is not new in the sense of Article 54(1) and (2) EPC.

Although none of the cited documents discloses the subject-matter of claim 1 in a very explicit way, the subject-matter of claims 1-4 is however anticipated by children playing with water, wherein water is sucked from a sink or a bucket by squeezing and releasing a bottle made of plastics, and re-ejecting the water in the sink or in the bucket, necessarily at a discharging position which is horizontally different from the sucking position by squeezing again the bottle.

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4. The introduction in claim 1, of some limiting features among others that the method is directed to mixing blood samples in a test tube, a patentable method claim could be drafted.
5. To meet the requirements of Rule 27(1)(b) EPC, all the documents D3-D8 should be identified in the description and the relevant background art disclosed therein should be briefly discussed.
6. The applicant is referred to the dispositions of Rule 86(3) EPC. If the set of claims to be submitted still not fulfils the requirements of the EPC, the applicant will be summoned to oral proceedings